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PHOENIX, ARIZONA

July 24, 1968

DEPARTMENT OF LAW LETTER OPINION NO. 68-16-L (R-46)

REQUESTED BY: THE HONORABLE DAVID B. KRET
Arizona State Senator

- QUESTIONS:
1. Do the provisions of subsection A(3) of § 9-471, Arizona Revised Statutes, adopted in 1967, relating to annexation of city limits by petition, require the County Recorder of the County where territory annexed to a city or town is located to accept for filing and file a copy of the annexation ordinance, with an accurate map of the territory annexed, certified by the mayor of the city or town?
 2. If the County Recorder records the above documents instead of filing them, is this a sufficient compliance with the statute to accomplish a valid annexation?

- ANSWERS:
1. Yes.
 2. Yes.

Subsection A(3) of A.R.S. § 9-471 provides that the governing body of the annexing town or city shall file certain documents with the proper County Recorder. At the same time subsection A of A.R.S. § 11-461, as amended, provides that the county recorder shall have custody of and keep all maps and papers deposited in his office. And subsection B of that same statute provides that he shall record in a specified manner all instruments or writings required or authorized by law to be recorded. The use of the word "shall" is mandatory and excludes any idea of discretion particularly when the statute is addressed to a public official. See People v. O'Rourke, 104 Cal.App. 752, 13 P.2d 989, 992 (1932), Smith v. Nebraska Liquor Control Commission, 152 Neb. 676, 42 N.W.2d 297, 299 (1950), Consolidated Freightways Corporation of Delaware

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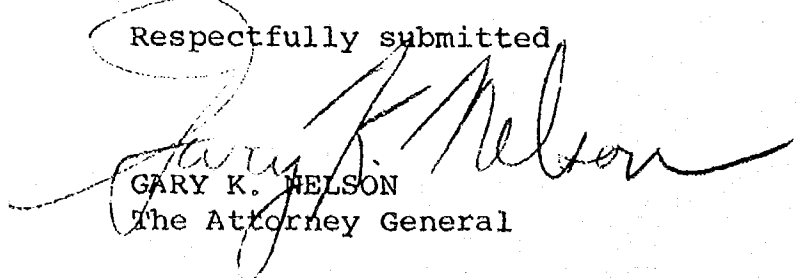
v. Nicholas, 258 Iowa 115, 137 N.W.2d 900, 904 (1965). Therefore, the County Recorder must record the documents that A.R.S. § 9-471 authorized to be recorded.

Further, the plain intent of the Legislature in enacting A.R.S. § 9-471(A)(3) is that a copy of the annexation ordinance, together with an accurate map of the territory to be annexed, should be a matter of public record. Although the exact wording of the statute does not require the County Recorder to accept the proffered documents, an interpretation that he could refuse to record them would frustrate the purpose of A.R.S. § 9-471. It is basic law that statutes will be construed so as to carry out the intent and purpose of the Legislature. State v. McEuen, 42 Ariz. 38, 26 P.2d 1005 (1933). Also, in statutory construction the spirit of the law prevails, if not its exact letter. City of Phoenix v. Superior Court in and for Maricopa County, 101 Ariz. 265, 419 P.2d 49 (1966).

As to Question 2, although there is a technical distinction between recording and filing in the abstract, there is no practical difference between the two in the operation of A.R.S. § 9-471(A)(3). The Honorable Cliff Ward, County Recorder of Maricopa County, advises that these documents cannot be recorded without being filed and vice versa. When the documents are presented in the County Recorder's office they will be both recorded and filed for record.

Furthermore, it appears that the Arizona Legislature in 1967 abolished filing as a means of preserving public records with the County Recorder. The duties of the county recorder are set forth in Chapter 3, Article 3 of Title 11. The 1967 amendments of this article substitute the word "record" for the word "file," each time the latter appeared in the old statute. The changes are especially evident in A.R.S. § 11-475 concerning recorders' fees: In this section there is no longer any provision for filing fees.

Respectfully submitted,


GARY K. NELSON

The Attorney General